

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

UNITED STATES OF AMERICA ,

Plaintiff,

v.

**BAYER CROPSCIENCE INC. and
PHARMACIA CORPORATION,**

Defendants.

CIVIL ACTION NO. _____

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Industri-plex Superfund Site ("Site") in Woburn, Massachusetts, together with accrued interest; and (2) performance of studies and response work by the defendants at Operable Unit 2 of the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Massachusetts (the "Commonwealth") on March 30, 2006, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for Operable Unit 2, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustees on June 8, 2006 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. EPA notified the Commonwealth's natural resource trustee on June 8, 2006 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Commonwealth trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from Operable Unit 2 constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658 – 40673.

H. EPA has divided the remediation of the Industri-plex Site into two discrete actions, or Operable Units, as defined in 40 C.F.R. § 300.5.

I. A Consent Decree governing Operable Unit-1 (OU 1) was entered by the United States District Court for the District of Massachusetts on April 24, 1989. The remediation of OU 1 was focused principally on the remediation of contaminated soils, and also called for an interim groundwater remedy and the further study of surface and groundwater contamination at the Site.

Settling Defendants, among others, were parties to the OU 1 Consent Decree.

J. In June, 2005, EPA issued the final Remedial Investigation/Feasibility Study ("RI/FS") for Operable Unit 2 at the Site. Operable Unit 2 focuses on the remediation of groundwater, surface water, sediment, and soil contamination within the second operable unit at the Site identified in EPA's Record of Decision dated January 31, 2006. The RI/FS for the Industri-plex Site OU 2 incorporates, among other things, investigations performed with respect to Operable Unit 3 at the Wells G&H Site. The Wells G&H Site, located in Woburn, Massachusetts, was placed on EPA's National Priorities List on September 8, 1983, 48 Fed. Reg. 40658 – 40673.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action for Industri-Plex Site Operable Unit 2 on June 29, 2005, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meetings is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. The decision by EPA on the Remedial Action to be implemented at Operable Unit 2 is embodied in a final Record of Decision ("ROD"), executed on January 31, 2006, on which the Commonwealth has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

M. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

N. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

O. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, and implementation of this Consent Decree will expedite the cleanup of Operable Unit 2 and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

I. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall

not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to Operable Unit 2 or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

"Commonwealth" shall mean the Commonwealth of Massachusetts.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"MassDEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 112.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections IX (including, but not limited to, the cost of attorney time and any monies to be paid to secure access and/or to secure, implement, or administer institutional controls including, but not limited to, the amount of just compensation, and costs incurred in the management or administration of Institutional Controls following implementation), XV, and XVI. Future Response Costs shall also include all Interim Response Costs, and all Interest on the Past Response Costs that Settling Defendants have agreed to pay that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 30, 2005 to the effective date of this Consent Decree.

“Institutional Controls” shall mean those aspects of the remedy involving legal and administrative measures, but not engineering controls, that ensure the long-term effectiveness and protectiveness of response actions performed at the Site, as set forth in Section IX.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with Operable Unit 2 including Wells G&H Superfund Site Operable Unit 3 between September 30, 2005, and the Effective Date, or (b) incurred by the United States prior to the Effective Date but paid after that date.

“Interest” shall mean: for payments owed to the United States in accordance with 42 U.S.C. § 9607(a), interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest for payments owed to the United States is subject to change on October 1 of each year.

“Massachusetts Contingency Plan” or “MCP” shall mean the regulations promulgated pursuant to M.G.L. c. 21E, codified at 310 C.M.R. 40.0000, et seq., and any amendments thereto.

“M.G.L. c. 21C” shall mean the Massachusetts Hazardous Waste Management Act, as amended.

“M.G.L. c. 21E” or “Chapter 21E” shall mean the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, as amended.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all operation and maintenance activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW) including, without limitation, the IC Inspection and Monitoring Plan.

"Operable Unit 1" or "OU1" shall mean the first operable unit at the Site identified in EPA's Record of Decision dated September 30, 1986. A map showing the area encompassed by OU 1 is attached as Appendix A to this Consent Decree.

"Operable Unit 2" or "OU2" shall mean the second operable unit at the Site identified in EPA's Record of Decision dated January 31, 2006. A map showing the area encompassed by OU 2 is attached as Appendix B to this Consent Decree.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with Operable Unit 2, including Wells G&H Superfund Site Operable Unit 3 through September 30, 2005, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a), through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section L of the ROD and Section IV of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU2 at the Site entitled "Industri-plex Superfund Site Operable Unit-2 (and including Wells G&H Superfund Site Operable Unit 3), "signed on January 31, 2006, by the Regional Administrator, EPA Region 1-New England, or his delegate, and all attachments thereto. The ROD is attached as Appendix C.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, required to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and any amendments thereto.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean Bayer CropScience Inc. and Pharmacia Corporation.

"Site" shall mean OU 1 and OU 2 of the Industri-plex Superfund Site.

"State" shall mean the Commonwealth of Massachusetts.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at Operable Unit 2, as set forth in Appendix D to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" or "oil" under the Massachusetts Oil and Hazardous Release Prevention and Response Act, M.G.L. c. 21E, 2; and (5) any "hazardous waste" under the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, 2.

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, including all Operation and Maintenance, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at Operable Unit 2 by the design and implementation of response actions for Operable Unit 2 by the Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

(a) Settling Defendants shall finance and perform the Work in accordance with this

Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA, pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

- (b) The obligations of Settling Defendants to finance and perform the Work, and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD and the SOW ("ARARs"). The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

- (a) As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- (b) The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.
- (c) This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

9. The Settling Defendants shall perform the Work at Operable Unit 2 as described in this Consent Decree, in the Record of Decision attached as Appendix C, and in the Statement of Work, which the Parties agree is consistent with the ROD, attached as Appendix D. The ROD, the SOW, and all modifications to the SOW are hereby incorporated by reference and made a part of this Decree.

10. Selection of Supervising Contractor.

- (a) All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within thirty (30) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the Commonwealth and must obtain an authorization to proceed from EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.
- (b) If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the Commonwealth a list of contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the Commonwealth of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.
- (c) If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph, and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

- (a) Settling Defendants shall submit a Design schedule pursuant to Sections V.A and V.B of the SOW attached as Appendix D, and a work plan for the design of the Remedial Action at Operable Unit 2 ("Remedial Design Work Plan" or "RD

Work Plan") in accordance with Section V.B of the SOW attached as Appendix D, for EPA review and approval or modification or disapproval. The Remedial Design Work Plan shall provide for the design of the remedy set forth in the ROD and this Consent Decree, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan and all other plans, submittals, and deliverables under Section V of the SOW, shall be incorporated into and become enforceable under this Consent Decree. The Settling Defendants shall submit to EPA for approval, a Health and Safety Plan for field design activities, including field design activities conducted pursuant to Paragraph 11(c), below, which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120, and all other Remedial Design plans, submittals and deliverables described in the SOW, in accordance with the approved Design schedule.

- (b) Upon approval of the Remedial Design Work Plan by EPA, and submittal of the Health and Safety Plan for all field activities to EPA and the Commonwealth, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the Commonwealth all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at Operable Unit 2 prior to approval of the Remedial Design Work Plan. Upon approval by EPA of the other Remedial Design deliverables required under the SOW, Settling Defendants shall implement the activities required by such deliverables.
- (c) In addition to the Remedial Design activities set forth in Paragraphs 11(a) & (b), above, Settling Defendants will be permitted to simultaneously perform studies to formulate an alternative approach to performing a remedial action in the HBHA Pond. Settling Defendants may choose to submit a work plan for these studies to EPA for review and comment and EPA shall determine, in its sole discretion, whether to review and comment on such work plan. Any such review and comment by EPA will be subject to the provisions of Paragraph 57 (Payments for Future Response Costs). After conducting such studies, if Settling Defendants propose that EPA adopt an alternative remedy for the HBHA Pond, EPA shall consider, in view of the Performance Standards, any of the other objectives of the ROD and in accordance with the NCP, after a reasonable opportunity for review and comment by the Commonwealth, whether to adopt such an alternative remedy. However, EPA shall be required to consider whether to adopt such an alternative remedy only if the Settling Defendants submit their proposed alternative remedy to EPA, with all backup information, on or before the time when the 30% Design Submission is due under the SOW. If EPA approves an alternative remedy proposed by the Settling Defendants for the HBHA Pond, in accordance with CERCLA and the NCP, Settling Defendants shall implement it.

EPA's determination as to whether to adopt any such alternative remedy shall be subject to the dispute resolution procedures set forth at Paragraph 74(d). This shall be the Settling Defendants' sole administrative or judicial process in relation to such alternative remedy.

12. Remedial Action.

- (a) Within thirty (30) days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the Commonwealth a work plan for the performance of the Remedial Action at Operable Unit 2 ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan approved by EPA pursuant to Paragraph 11(a). Upon its approval by EPA, the Remedial Action Work Plan, and all other plans, submittals and deliverables under Section VI of the SOW, shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the Commonwealth a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Settling Defendants shall submit to EPA for approval all other Remedial Action plans, submittals and deliverables described in the SOW, in accordance with the schedule set forth in the SOW and the approved Remedial Action Work Plan.
- (b) Upon approval of the Remedial Action Work Plan by EPA, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the Commonwealth all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at Operable Unit 2 prior to approval of the Remedial Action Work Plan. Upon approval by EPA of the other Remedial Action deliverables required under the SOW, Settling Defendants shall implement the activities required by such deliverables.
- (c) The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such

modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

- (a) For the purposes of this Paragraph 13, the "scope of the remedy selected in the ROD" is defined as the remedial actions required to address the unacceptable risks present in OU 2, as described in Section L of the ROD. Generally, these remedial actions consist of: dredging and off-Site disposal of contaminated sediments; use of the northern portion of HBHA Pond as a treatment and sediment retention area; construction of permeable and impermeable caps to prevent contaminated groundwater plumes from discharging into surface water and the downstream migration of contaminants; establishing Institutional Controls to restrict contact with soils, groundwater, or deeper interior wetland sediments with concentrations above Performance Standards, protection of the selected remedy, and long-term inspection and monitoring of the Institutional Controls; compensation of any loss of wetland functions associated with the selected remedy; in-situ enhanced bioremediation of groundwater plumes, if selected by EPA, consistent with the SOW; and long-term monitoring of the groundwater, surface water, and sediments.
- (b) If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 74 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.
- (c) Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.
- (d) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design, or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from Operable Unit 2 to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- (a) The Settling Defendants shall include in the written notification the following information, where available: (i) the name and location of the facility to which the Waste Material is to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
- (b) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- (c) Before shipping any hazardous substances, pollutants or contaminants from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440. Settling Defendants shall only send hazardous substances, pollutants or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, after a reasonable opportunity for review and comment by the Commonwealth, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, after a reasonable opportunity for review and comment by the Commonwealth, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 91 or Paragraph 92 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling

Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (i) EPA's determination that the reopener conditions of Paragraph 91 or Paragraph 92 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied; (ii) EPA's determination that the Remedial Action is not protective of human health and the environment; or (ii) EPA's selection, after a reasonable opportunity for review and comment by the Commonwealth, of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 74 (record review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA and the Commonwealth for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Region I, EPA-New England Compendium of Quality Assurance Project Plan Requirements and Guidance," (U.S. EPA-New England Region I Quality Assurance Unit Staff, Office of Environmental Measurement and Evaluation; October 1999 Final), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Commonwealth, a Sampling Analysis Plan ("SAP") which includes, among other things, a Quality Assurance Project Plan ("QAPP"), that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall ensure that all laboratories they use for

analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and MassDEP or their authorized representatives. Settling Defendants shall notify EPA and MassDEP not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA and MassDEP. In addition, EPA and MassDEP shall have the right to take any additional samples that EPA or MassDEP deems necessary. Upon request, EPA and MassDEP shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

23. Settling Defendants shall submit five (5) copies to EPA and two (2) copies to the Commonwealth of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to Operable Unit 2 and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable Federal statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the property addressed by Operable Unit 2 where access and/or land/water use restrictions are needed to implement this Consent Decree, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendant shall:

- (a) commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth, and their representatives, including EPA, MassDEP, and their contractors, with access at all reasonable times to the property addressed by Operable Unit 2, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:
 - (i) Monitoring the Work;

- (ii) Verifying any data or information submitted to the United States and the Commonwealth;
 - (iii) Conducting investigations relating to contamination at or near Operable Unit 2;
 - (iv) Obtaining samples;
 - (v) Assessing the need for, planning, or implementing additional response actions at or near Operable Unit 2;
 - (vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
 - (vii) Implementing the Work pursuant to the conditions set forth in Section VI of this Consent Decree;
 - (viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
 - (ix) Assessing Settling Defendants' compliance with this Consent Decree; and
 - (x) Determining whether the property addressed by Operable Unit 2 or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
- (b) commencing on the date of lodging of this Consent Decree, refrain from using the property addressed by Operable Unit 2 where land/water use restrictions are needed to implement this Consent Decree, or such other property where land/water use restrictions are needed to implement this Consent Decree, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree or cause unacceptable risk to human health. Such restrictions include, but are not limited to:
- (i) there shall be no disturbance of the surface or subsurface of that portion of the property within Operable Unit 2 approximately depicted on ROD Figure J-6 as requiring Cap Protection Institutional Controls, including, but not limited to, by filling, drilling, excavating, removing topsoil, rock or minerals, plowing, planting or cultivating, or changing the topography in any manner that would adversely affect the integrity of the Remedial Action;
 - (ii) there shall be no disturbance of the surface or subsurface of that portion of the property within Operable Unit 2 approximately depicted on ROD Figures J-1 and J-2 as requiring Soil Exposure Institutional Controls,

including, but not limited to, by filling, drilling, excavating, removing topsoil, rock or minerals, plowing, planting or cultivating, that would cause unacceptable risk to human health;

- (iii) there shall be no disturbance of sediments on that portion of the property within Operable Unit 2 approximately depicted on ROD Figure J-9 as requiring Sediment Exposure Institutional Controls, including, but not limited to, by filling, drilling, excavation, removal of topsoil, rock or minerals, plowing, planting or cultivating, that would cause unacceptable risk to human health;
 - (iv) there shall be no use of groundwater on that portion of the property within Operable Unit 2 approximately depicted on ROD Figure J-3 as requiring Groundwater Exposure Institutional Controls;
 - (v) there shall be no other activity or use which would disturb the Remedial Action;
 - (vi) Response actions, undertaken or approved by EPA or MassDEP, shall not be subject to the restrictions established pursuant to this Consent Decree.
- (c) For property addressed by Operable Unit 2 where access and/or land/water use restrictions are needed to implement this Consent Decree, or such other property where access and/or land/water use restrictions are needed to implement this Consent Decree, if EPA determines, in accordance with the SOW, that such access rights and/or restrictions should be in the form of easements running with the land, each such Settling Defendant shall execute and record in the Middlesex South Registry of Deeds or Land Registration Office, as applicable, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives. Such grant shall be fully assignable, in whole or in part. No grant, or assignment of the grant, to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Massachusetts General Laws c. 21E Section 6, as amended. Such Settling Defendants shall, within forty-five (45) days of the date of the receipt of written notice from EPA, with a copy to MassDEP, of EPA's determination that such environmental restrictions, as may be specified in such notice, are required, submit to EPA and the Commonwealth for review and approval with respect to such property:

- (i) a fully executed easement, including legal descriptions of the subject property and any separately restricted areas therein, based on the survey plans described below; that is enforceable under the laws of the Commonwealth of Massachusetts;
- (ii) a survey plan in recordable form (and a sketch plan, if registered land) of the subject property and of any separately restricted areas on the subject property;
- (iii) a current title insurance commitment, or some other evidence of title acceptable to EPA and MassDEP, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA, in consultation with MassDEP or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances), including a copy of the deed into the Grantor, and a copy of any instrument listed in the schedules to the title insurance commitment or other form of acceptable evidence of title.
- (iv) evidence of the authority of signatories to the easement and to any required subordination agreement or discharge of interest in the subject property.

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement and survey plan (and sketch plan, if applicable) with the Registry of Deeds or other appropriate office of Middlesex County. Within thirty (30) days of recording the easement and survey plan (and sketch plan, if applicable), such Settling Defendant shall provide EPA with title evidence updated through the time of recording and a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement and survey plan (and sketch plan, if applicable) showing the clerk's recording stamps. Within sixty (60) days of recording the easement and survey plan (and sketch plan, if applicable), or as soon as available thereafter, such Settling Defendant shall provide EPA with a copy of the recorded easement and survey plan (and sketch plan, if applicable), evidencing the stamped registry book and page numbers or other, final recording information. The easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111. The easement and title evidence (including final title evidence) and certificate of title or equivalent shall also satisfy any additional requirements of the Massachusetts Contingency Plan ("MCP"), 310 Code of Massachusetts Regulations 40.0000. A copy of all submissions to EPA made pursuant to this Paragraph shall concurrently be submitted to MassDEP.

In accordance with the requirements set forth in 310 C.M.R. 40.1403(7), as amended, and within thirty (30) days after recording and/or registering the easement, such Settling Defendant shall:

- (i) provide the City of Woburn Municipal Officer, Board of Health, Zoning Official, and

Building Code Enforcement Official with copies of such recorded and/or registered easement; (ii) publish a legal notice indicating the recording and/or registering of the easement, and including the information described in 310 C.M.R. 40.1403(7)(b)(1), in a newspaper which circulates in the City of Woburn; and (iii) provide copies of said legal notice to EPA and MassDEP within seven (7) days of its publication.

26. If property included in Operable Unit 2 where access and/or land/water use restrictions are needed to implement this Consent Decree, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than either of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

- (a) an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the Commonwealth, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree;
- (b) an agreement, enforceable by the Settling Defendants and the United States and the Commonwealth, to abide by the obligations and restrictions established by Paragraph 25(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and
- (c) for property addressed by Operable Unit 2 where access and/or land/water use restrictions are needed to implement this Consent Decree, or such other property where access and/or land/water use restrictions are needed to implement this Consent Decree, if EPA determines, in accordance with the SOW, that such access rights and/or restrictions should be in the form of easements running with the land, the execution and recordation in the Middlesex South Registry of Deeds or Land Registration Office, as applicable, of the Registry of Deeds or other appropriate land records office of Middlesex County, Commonwealth of Massachusetts, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives and (ii) the Settling Defendants and their representatives. Such grant shall be fully assignable, in whole or in part. No grant, or assignment of the grant, to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Massachusetts General Laws c. 21E Section 6, as amended. Settling Defendants shall, within forty-five (45) days of the date of the receipt of written notice from EPA, with a

copy to MassDEP, of EPA's determination that such easements, as may be specified in such notice, are required, submit to EPA and the Commonwealth for review and approval with respect to such property:

- (i) a fully executed easement, including legal descriptions of the subject property and any separately restricted areas therein, based on the survey plans described below; that is enforceable under the laws of the Commonwealth of Massachusetts;
- (ii) a survey plan in recordable form (and a sketch plan, if registered land) of the subject property and of any separately restricted areas on the subject property;
- (iii) a current title insurance commitment or some other evidence of title acceptable to EPA and MassDEP, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA, in consultation with MassDEP), including a copy of the deed into the Grantor, and a copy of any instrument listed in the schedules to the title insurance commitment or other form of acceptable evidence of title.
- (iv) evidence of the authority of signatories to the easement and to any required subordination agreement or discharge of interest in the subject property.

27. Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement and survey plan (and sketch plan, if applicable) with the Registry of Deeds or other appropriate office of Middlesex County. Within thirty (30) days of recording the easement and survey plan (and sketch plan, if applicable), such Settling Defendant shall provide EPA with title evidence updated through the time of recording and a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement and survey plan (and sketch plan, if applicable) showing the clerk's recording stamps. Within sixty (60) days of recording the easement and survey plan (and sketch plan, if applicable), or as soon as available thereafter, such Settling Defendant shall provide EPA with a copy of the recorded easement and survey plan (and sketch plan, if applicable), evidencing the stamped registry book and page numbers or other, final recording information. The easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111. The easement and title evidence (including final title evidence) and certificate of title or equivalent shall also satisfy any additional requirements of the Massachusetts Contingency Plan, 310 Code of Massachusetts Regulations 40.0000. A copy of all submissions to EPA made pursuant to this Paragraph shall concurrently be submitted to MassDEP.

In accordance with the requirements set forth in 310 C.M.R. 40.1403(7), as amended, and within thirty (30) days after recording and/or registering the easement, such Settling Defendant shall: (i) provide the City of Woburn Municipal Officer, Board of Health, Zoning Official and Building Code Enforcement Official with copies of such recorded and/or registered easement; (ii) publish a legal notice indicating the recording and/or registering of the easement, and including the information described in 310 C.M.R. 40.1403(7)(b)(1), in a newspaper which circulates in the City of Woburn; and (iii) provide copies of said legal notice to EPA and MassDEP within seven (7) days of its publication.

28. Based on such studies and evaluations to be performed pursuant to the SOW, as described above, EPA, after a reasonable opportunity for review and comment by MassDEP, may determine that forms of Institutional Controls other than the agreements and easements described above, are required. If EPA determines that land use restrictions in the form of state or local laws, regulations, ordinances, or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the Commonwealth's efforts to secure such governmental controls, as directed in writing by EPA. If EPA determines, in accordance with the SOW, that other forms of land use restrictions should be adopted to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith on property owned or controlled by Settling Defendants, Settling Defendants shall take such actions as needed to secure such other types of controls and/or cooperate with EPA's and the Commonwealth's efforts to secure such controls, as directed in writing by EPA. If EPA determines, in accordance with the SOW, that other forms of land use restrictions should be adopted to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith on property owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to implement such other types of controls and/or cooperate with EPA's and the Commonwealth's efforts to secure such controls, as directed in writing by EPA.

29. For purposes of Paragraphs 25, 26 and 28 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land use restrictions, and/or restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If any access or land use restriction agreements required by Paragraphs 26(a) or 26(b) of this Consent Decree are not obtained within forty-five (45) days of the date of the receipt of written notice from EPA, with a copy to MassDEP, of EPA's determination that such environmental restrictions, as may be specified in such notice, are required, or any access easements or restrictive easements required by Paragraph 26(c) of this Consent Decree are not submitted to EPA within forty-five (45) days of the date of the receipt of written notice from EPA, with a copy to MassDEP, of EPA's determination that such easements, as may be specified in such notice, are required, or Settling Defendants are unable to obtain an agreement pursuant to Paragraphs 25(c)(iii) or 26(c)(iii) of this Consent Decree from the holder of a prior lien or encumbrance to release such lien or encumbrance or to subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within forty-five (45) days of the date of the receipt of written notice from EPA, with a copy to MassDEP, of EPA's determination that such releases or subordinations, as may be specified in such notice, are required, Settling Defendants shall promptly notify the United States and MassDEP in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken

to attempt to comply with Paragraphs 25, 26 or 28 of this Consent Decree. The United States may, as appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, in obtaining the release/subordination of prior liens or encumbrances, or in obtaining any other form of land use restriction as may be required by Paragraph 28 (on property owned or controlled by persons other than Settling Defendants). Settling Defendants shall reimburse the United States, in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable Federal or State statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit five (5) copies to EPA and two (2) copies to the Commonwealth of written monthly progress reports as required in Sections of the SOW attached as Appendix D. Settling Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month as required by the SOW, until EPA notifies the Settling Defendants pursuant to Paragraph 52(b) of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

32. The Settling Defendants shall notify EPA and the Commonwealth of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 1-New England, United States Environmental Protection Agency. Settling Defendants shall orally notify the MassDEP Project Manager within 24 hours of the onset of any event for which notification to the EPA Project Coordinator is required as stated above. Settling Defendants shall orally notify the MassDEP Project Manager and the EPA Project Coordinator concurrently with any report of any release or threat of a release that meets the criteria set forth in 310 CMR § 40.0300 (in addition to notifying the MassDEP Northeast Regional Office of Emergency Response Section in accordance with the requirements of the MCP). These reporting requirements are in addition to

the reporting required by CERCLA Section 103 or EPCRA Section 304. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit five (5) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the Commonwealth. Alternatively, an electronic copy of each such submittal, if an electronic copy is available, can be submitted to EPA and the Commonwealth.

35. All reports and other documents submitted by Settling Defendants to EPA and/or the Commonwealth (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

36. All plans, reports, and other items required to be submitted to EPA and/or the Commonwealth under this Consent Decree may be submitted electronically, if mutually agreed to in advance by EPA and the Settling Parties.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall:

- (a) approve, in whole or in part, the submission;
- (b) approve the submission upon specified conditions;
- (c) modify the submission to cure the deficiencies;
- (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or
- (e) any combination of the above.

However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendants shall proceed to take any action

required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its rights to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. Resubmission of Plans.

- (a) Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall, within fourteen (14) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 and 42.
- (b) Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report, or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

43. Within thirty (30) days of lodging this Consent Decree, Settling Defendants, EPA and MassDEP will notify each other, in writing, of the name, address, and telephone number of their respective designated Project Coordinators. If a Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities.

44. Plaintiff may designate other representatives, including, but not limited to, EPA and Commonwealth employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at Operable Unit 2 constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis or as more specifically provided for in the SOW. EPA's Project Coordinator shall provide MassDEP's Project Coordinator with reasonable advance notice of all such meetings. MassDEP's Project Coordinator shall have the right to fully participate in all such meetings.

XIII. PERFORMANCE GUARANTEE

46. In order to ensure the full and final completion of the Work, the Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$25,700,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

- (a) A surety bond unconditionally guaranteeing payment and/or performance of the Work, that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- (b) One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to

issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

- (c) A trust fund in the amount of the total Estimated Cost of the Work, established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;
- (d) A policy of insurance in the amount of the total Estimated Cost of the Work that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;
- (e) A demonstration by one or more Settling Defendants that each such Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or
- (f) A written guarantee to fund or perform the Work, executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of, the Settling Defendants or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

If, at any time, the Settling Defendants are providing more than one Performance Guarantee in order to ensure the full and final completion of the Work, the choice of forms of guarantee shall be limited to those set forth in Paragraphs 46(a), (b), (c), (d) and/or (f).

47. Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee, the following two Performance Guarantees: (a) a written guarantee by Monsanto Company to fund or perform the Work, up to a capped amount of \$12,850,000, pursuant to Paragraph 46(f), to be provided in the form attached hereto as Exhibit E and (b) an irrevocable letter of credit, to be provided by Bayer CropScience Inc., payable to or at the direction of EPA, in the amount of \$12,850,000, pursuant to Paragraph 46(b), to be provided in the form attached hereto as Exhibit F. Within ten (10) days after the Effective Date, Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make each of the selected Performance Guarantees legally binding in a form substantially identical to the documents attached hereto as Exhibits E and F, and such Performance Guarantees shall thereupon be fully effective. Within thirty (30) days of the Effective Date, Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantees legally binding to the EPA Regional Financial Management Officer in accordance with Section

XXVI (Notices and Submissions) and to the United States and EPA as specified in Section XXVI.

48. If at any time during the effective period of this Consent Decree, any of the Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 46(e) or Paragraph 46(f) above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements at such time as the entity files its Annual Reports on Form 10K with the Securities and Exchange Commission or, if the entity does not file such reports, within ninety (90) days after the close of such entity's fiscal year; and (iii) the notification of EPA within ninety (90) days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree for which the Settling Defendants are responsible, and the terms "current closure cost estimate", "current post-closure cost estimate", and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work for which the Settling Defendants are responsible.

49. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work for which they are responsible or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work for which they are responsible, or for any other reason, the Settling Defendants, within thirty (30) days of receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of such Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval, a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 46 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, the Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(ii) of this Consent Decree. No Settling Defendants inability to post a Performance Guarantee for completion of the Work shall excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of such Settling Defendants to complete the Work in strict accordance with the terms hereof.

50. The commencement of any Work Takeover pursuant to Paragraph 94 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 46(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work

Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 46(e), the Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

51. Modification of Amount and/or Form of Performance Guarantee.

- (a) Reduction of Amount of Performance Guarantee. If the Settling Defendants believe that the estimated cost to complete the remaining Work pursuant to Schedule A has diminished below the amount set forth in Paragraph 46 above, the Settling Defendants may, on any anniversary effective date of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. The Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, the Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(ii) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the Settling Defendants of such decision in writing. After receiving EPA's written acceptance, the Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, the Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 49 or 52(b) of this Consent Decree.
- (b) Change of Form of Performance Guarantee.
 - (i) If, after the effective date of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary of the effective date of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 51(b)(ii) of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable

discretion, and such decision shall not be subject to challenge by the Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

- (ii) The Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. The Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions) of this Consent Decree. EPA shall notify the Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten (10) days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, the Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. The Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty (30) days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI (Notices and Submissions) of this Consent Decree, with a copy to and to the United States and EPA and the Commonwealth as specified in Section XXVI.

(c) Release of Performance Guarantee.

- (i) If the Settling Defendants receive written notice from EPA in accordance with Paragraph 52 hereof that the Work for which it/they are responsible has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. The Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance

Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Remedial Action.

- (a) Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the Commonwealth. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer registered in the Commonwealth. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA, with a copy to the Commonwealth, will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13(a). EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications

and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

- (b) If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA, with a copy to the Commonwealth, will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

53. Completion of the Work.

- (a) Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a professional engineer registered in the Commonwealth, stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA determines, after a reasonable opportunity for review and comment by the Commonwealth, that any portion of the Work has not been completed in accordance with this Consent Decree, EPA, after a reasonable opportunity for review and comment by the Commonwealth, with a copy to the Commonwealth, will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13(a). EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a

schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

- (b) If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 1-New England. In such an event, the Settling Defendants shall also immediately notify MassDEP's Project Manager, or if the MassDEP's Project Coordinator is unavailable, MassDEP's Alternate project Coordinator, and MassDEP's Northeast Regional Office of Emergency Response Section. Such notification is in addition to any other notification requirements under M.G.L. c. 21E and the MCP, including without limitation notification for a release set forth in 310 CMR § 40.0300. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP, pursuant to Section XVI (Payments for Response Costs).

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States: a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

56. Payments for Past Response Costs.

- (a) Within thirty (30) days of the Effective Date, Settling Defendants shall pay to EPA \$6,000,000 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2007Z00674, EPA Site/Spill ID Numbers 01-07 and 01-46, and DOJ Case Numbers 90-11-2-228/6 and 90-11-3-194. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Massachusetts following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.
- (b) At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the EPA Financial Management Office, in accordance with Section XXVI (Notices and Submissions).
- (c) Of the total amount to be paid by Settling Defendants pursuant to Subparagraph 56(a), 49% shall be deposited in the Industri-plex Superfund Site Special Account and 51% shall be deposited in the Wells G&H Superfund Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with each Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

57. Payments for Future Response Costs.

- (a) Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that consists of a Region 1 standard cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by EPA and DOJ (including amounts paid by EPA to its contractors and reimbursed to the Commonwealth).
- (b) Settling Defendants shall make all payments within thirty (30) days of Settling Defendants receipt of each bill requiring payment, except as otherwise provided in Paragraph 58. Settling Defendants shall make all payments required by this Paragraph by a certified or cashier's check made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 01-07, and the Industri-plex Superfund Site Special Account. Settling Defendants shall send the check(s) to:

Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

- (c) At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the EPA Financial Management Office, in accordance with Section XXVI (Notices and Submissions).
- (d) The total amount to be paid by Settling Defendants pursuant to Subparagraph 57(a) shall be deposited in the Industri-plex Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

58. Settling Defendants may contest payment to the United States of any Future Response Costs under Paragraph 57 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 57.

59. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Massachusetts and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

60. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States, in the manner described in Paragraph 57. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States, in the manner described in Paragraph 57; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for their Future Response Costs.

61. In the event that the payments required by Subparagraph 56(a) are not made within thirty (30) days of the Effective Date or the payments required by Paragraph 57 are not made within thirty (30) days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue thirty (30) days after the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 56.

XVII. INDEMNIFICATION AND INSURANCE

62. Settling Defendants' Indemnification of the United States.

- (a) The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save, and hold harmless the United States and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.
- (b) The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 62, and shall consult with Settling Defendants prior to settling such claim.

63. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to Operable Unit 2,

including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to Operable Unit 2, including, but not limited to, claims on account of construction delays.

64. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Work pursuant to Subparagraph 52(b) of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of five million dollars, combined single limit, naming the United States as additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

65. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (i) as it is occurring and (ii) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

66. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, within 24 hours of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all

actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

67. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing, with a copy to MassDEP, of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

68. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of this Paragraph. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

69. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 69 through 76.

70. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute

arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

71. Statements of Position.

In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 74 or Paragraph 75.

72. Within twenty-one (21) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 74 or 75. Within fourteen (14) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

73. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 74 or 75, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 74 and 75.

74. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (i) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (ii) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

- (a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by Settling Defendants, EPA, or the Commonwealth.
- (b) The Director of the Office of Site Remediation and Restoration, EPA Region 1-New England will issue a final administrative decision resolving the dispute based

on the administrative record described in Paragraph 74(a). This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 74(c) and (d).

- (c) Any administrative decision made by EPA pursuant to Paragraph 74(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion. The parties shall concurrently provide a copy of any court filings to the Commonwealth.
- (d) As set forth in Paragraph 11(c), Settling Defendants will be permitted to perform studies to formulate an alternative approach to performing the remedial action in the HBHA Pond. After conducting such studies, if Settling Defendants propose that EPA adopt such an alternative remedy, EPA determines that such an alternative remedy should not be adopted, and Settling Defendants choose to dispute this determination, the procedures set forth in Paragraphs 70 - 72 shall be followed, and the Deputy Regional Administrator, EPA Region 1-New England, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 74(a). This decision shall be binding upon the Settling Defendants, and will not be subject to judicial review.
- (e) In proceedings on any dispute governed by this Paragraph that are subject to judicial review, Settling Defendants shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 74(a).

75. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 71, the Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's decision shall be binding on the Settling Defendants unless, within ten (10) days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

76. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 81. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

77. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 78 and 79 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include timely and satisfactory completion of all activities or requirements under this Consent Decree or any work plan or other plan approved under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, the SOW, any plans or other documents approved by EPA, and any plans or other documents approved by MassDEP in the case of any Institutional Controls for which MassDEP is a grantee of a real property interest, pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

78. The following stipulated penalties shall be payable per violation per day for any noncompliance except those identified in Paragraphs 79 and 80:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$4000	1st through 14th day
\$8000	15th through 30th day
\$12,500	31st day and beyond

79. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Sections X and XI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$800	1st through 14th day
\$1750	15th through 30th day
\$4000	31st day and beyond

80. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 94 (Work Takeover) of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$1,250,000.

81. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (ii) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, under Paragraph 74(b), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (iii) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

82. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

83. All penalties owed to the United States under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendants' receipt from EPA (as set forth in Paragraph 82) of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to: Cincinnati Finance Center, PO Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #01-07, the DOJ Case Number 90-11-2-228/6, and the name and address of the party making payment. Settling Defendants shall also send copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), to the United States as provided in Section XXVI (Notices and Submissions).

84. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

85. Penalties shall continue to accrue as provided in Paragraph 81 during any dispute resolution period under Section XIX (Dispute Resolution), but need not be paid until the following:

- (a) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

- (b) If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph (c) below;
- (c) If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

86. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82. Interest on any unpaid balance due to the United States shall accrue at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

87. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

88. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

89. United States Covenants not to Sue Settling Defendants In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 90, 91, and 96 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 56(a) of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

90. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

- (a) to perform further response actions relating to the Site, or
- (b) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:
 - (i) conditions at the Site, previously unknown to EPA, are discovered, or
 - (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

91. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

- (a) to perform further response actions relating to the Site, or
- (b) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:
 - (i) conditions at the Site, previously unknown to EPA, are discovered, or
 - (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

92. For purposes of Paragraph 90, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for Operable Unit 2 of the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 91, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

93. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters not expressly included within Plaintiff's covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, including but not limited to, the following:

- (a) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- (b) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (c) liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal or arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;
- (d) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (e) criminal liability;
- (f) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- (g) prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Section XXXI (Modification); and
- (h) liability for any actions required under the Consent Decree governing the remediation of Operable Unit-1 (OU 1), entered by the United States District Court for the District of Massachusetts on April 24, 1989.

94. Work Takeover

- (a) In the event EPA determines that Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of ten (10) days within which to remedy the circumstances giving rise to EPA's issuance of such notice or such longer period as determined by EPA.

- (b) If, after expiration of the 10-day notice period specified in Paragraph 94, Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 94(b).
- (c) Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 94(b). However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 94(b) until the earlier of (i) the date that Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 75, requiring EPA to terminate such Work Takeover.
- (d) After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 50 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 50, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payments for Response Costs).

95. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

96. Covenant Not to Sue. Subject to the reservations in Paragraph 97, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, past response actions, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

- (a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

- (b) any claims against the United States including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, related to the Site;
- (c) any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 103 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 90, 91, and 93 (b)-(d) and (g)-(h), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

97. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

98. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

99. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

100. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in

connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs, response actions, or Natural Resource Damages as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree) or under the Consent Decree entered by the District of Massachusetts on April 24, 1989 in respect of OU-1, in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

101. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

102. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

103. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

104. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at Operable Unit 2 or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

105. **Business Confidential and Privileged Documents.**

- (a) Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies

documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

106. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

107. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around Operable Unit 2.

XXV. RETENTION OF RECORDS

108. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52(b) of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at Operable Unit 2, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52(b) of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

109. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or

generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

110. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding Operable Unit 2 since notification of potential liability by the United States or the filing of suit against it regarding Operable Unit 2 and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, if any.

XXVI. NOTICES AND SUBMISSIONS

111. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental
Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-228/6

Donald G. Frankel
Trial Attorney
Department of Justice
Environmental Enforcement Section
One Gateway Center
Suite 616
Newton, MA 02458

As to EPA:

Director
Office of Site Remediation
and Restoration
United States Environmental
Protection Agency
Region 1, New England
One Congress Street Suite 1100
Boston MA 02114

Joseph LeMay
EPA Project Coordinator
Industri-plex Superfund Site - OU2
United States Environmental
Protection Agency
Region 1, New England
One Congress Street Suite 1100
Boston MA 02114

As to Financial Management Office:

EPA Cincinnati Financial Office
26 Martin Luther King Drive
Cincinnati, Ohio, 45268

As to Regional Financial Management Officer:

David Tornstrom
Regional Financial Management Officer
US EPA Region 1 - New England
One Congress Street, Suite 110 (MCO)
Boston, MA 02114-2023

As to the Settling Defendants:

de maximis inc.
200 Day Hill Road, Suite 200
Windsor, Connecticut 06095
Attn: Bruce Thompson

XXVII. EFFECTIVE DATE

112. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, or a motion to enter is granted, as reflected in the Court's docket, whichever is earlier, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

113. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

114. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the map of Operable Unit 1.

"Appendix B" is the map of Operable Unit 2.

"Appendix C" is the ROD.

"Appendix D" is the SOW.

"Appendix E" is the Guarantee.

"Appendix F" is the Letter of Credit.

XXX. COMMUNITY RELATIONS

115. Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA after a reasonable opportunity for review and comment by the Commonwealth. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to Operable Unit 2.

XXXI. MODIFICATION

116. Material modifications to the SOW may be made only by written notification to and written approval of the United States, the Settling Defendants, and the Court. Prior to providing its approval to any material modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification.

117. Modifications to schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants. Such non-material modifications will become effective upon agreement of the parties.

118. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 117 may be made only by written notification to and written approval of the United States and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree may be made only by written notification to and approval of the United States, the Settling Defendants, and the Court.

119. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

120. This Consent Decree shall be lodged with the Court and subject to public notice and comment periods in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice and agree not to challenge entry or the terms of this Consent Decree.

XXXIII. SIGNATORIES/SERVICE

121. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. The undersigned representative of Monsanto Company certifies that Monsanto Company is authorized to execute this Consent Decree on behalf of Pharmacia Corporation by indemnity agreements entered into between Monsanto Company and Pharmacia Corporation. The undersigned representative of Stauffer Management Company LLC certifies that Stauffer Management Company LLC is authorized to execute this Consent Decree on behalf of Bayer CropScience Inc. as indemnitor.

122. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

123. Each Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXIV. FINAL JUDGMENT

124. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ___ DAY OF _____, 200__.

United States District Judge

**FOR THE UNITED STATES
OF AMERICA**

11 Feb. 2008
Date

Ronald J. Tenpas /
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

Donald G. Frankel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
One Gateway Center, Suite 616
Newton, MA 02458
(617) 450-0442

Michael J. Sullivan
United States Attorney
District of Massachusetts

George B. Henderson, II
Assistant United States Attorney
Suite 9200
John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, MA 02210]

2-14-08
Date

Robert W. Varney
Regional Administrator
United States Environmental Protection Agency
Region 1, New England
One Congress Street, Suite 1100
Boston, MA 02114

2/11/08
Date

David Peterson
Senior Enforcement Counsel
United States Environmental Protection Agency
Region 1, New England
One Congress Street, Suite 1100
Boston, MA 02114

**FOR PHARMACIA CORPORATION f/k/a
MONSANTO COMPANY BY ITS
ATTORNEY-IN-FACT MONSANTO
COMPANY**

12/4/07
Date

Signature: _____
Name (print): JESSIE N. KUFFE
Title: Dir. Env. Affairs
Address: MONSANTO COMPANY
800 N. LINDBERGH BLVD
ST LOUIS MO 63167

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): MARY M. SHAFER
Title: ASST GEN COUNSEL
Address: MONSANTO COMPANY
800 N LINDBERGH BLVD
ST LOUIS MO 63167
Ph. Number: 314-694-3883

FOR BAYER CROPSCIENCE INC. BY
STAUFFER MANAGEMENT COMPANY LLC
AS LITIGATION AGENT FOR BAYER
CROPSCIENCE INC. (CORPORATE
SUCCESSOR BY MERGER TO THE
FORMER STAUFFER CHEMICAL
COMPANY)

12/4/07
Date

Signature: _____
Name (print): LUKE W. METSE
Title: PRESIDENT, STAUFFER MGMT. CO.
Address: 1800 CONCORD PIKE
FAP-3, P.O. BOX 15437
WILMINGTON, DE
19850-5437

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): PETER A. ALPERT
Title: ATTORNEY
Address: ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624

